

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: FLSA PILOT PROGRAM

MEDIATION REFERRAL ORDER  
FOR CASES THAT INCLUDE  
CLAIMS UNDER THE FAIR  
LABOR STANDARDS ACT 29  
U.S.C. § 201 *et seq.*

KATHERINE POLK FAILLA, United States District Judge:

As part of a pilot program for cases involving claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, the Clerk of Court is directed to enter this order in all newly filed FLSA cases on my docket. Since cases involving FLSA claims often benefit from early mediation, it is hereby

ORDERED that prior to the case management conference pursuant to a Fed. R. Civ. P. 16(b) the Court is referring this case to mediation under Local Civil Rule 83.9 and that mediation shall be scheduled within sixty days.

IT IS FURTHER ORDERED that to facilitate mediation the parties shall, within four weeks of this Order, confer and provide the following:

1. Both parties shall produce any existing documents that describe Plaintiff’s duties and responsibilities.
2. Both parties shall produce any existing records of wages paid to and hours worked by the Plaintiff (e.g., payroll records, time sheets, work schedules, wage statements and wage notices).
3. Plaintiff shall produce a spreadsheet of alleged underpayments and other damages.
4. Defendants shall produce any existing documents describing compensation policies or practices.
5. If Defendants intend to assert an inability to pay then they shall produce proof of financial condition including tax records, business records, or other documents demonstrating their financial status.

IT IS FURTHER ORDERED that in the event the parties reach settlement, pursuant to *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015), they shall prepare a joint statement explaining the basis for the proposed settlement, including any provision for attorney fees, and why it should be approved as fair and reasonable. The settlement agreement and joint statement shall be presented to the assigned District Judge, or to the assigned Magistrate Judge should the parties consent to proceed for all purposes before the assigned Magistrate Judge (the appropriate form for which is available at <https://nysd.uscourts.gov/sites/default/files/2018-06/AO-3.pdf>).

IT IS FURTHER ORDERED that, in the event the parties do not reach a settlement, they shall promptly meet and confer pursuant to Fed. R. Civ. P. 26(f) in preparation for their initial pretrial conference with the Court.

**Counsel who have noticed an appearance as of the issuance of this order are directed to notify all other parties' attorneys in this action by serving upon each of them a copy of this order.** If unaware of the identity of counsel for any of the parties, counsel receiving this order must send a copy of this order to that party directly.

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

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KATHERINE POLK FAILLA  
United States District Judge

Dated: December 10, 2019  
New York, New York